

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 21, 2005

**SENATE BILL**

**No. 894**

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**Introduced by Senators Dunn and Ackerman**

February 22, 2005

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~~An act to amend Section 69104 of the Government Code, relating to courts.~~ *An act to add Section 6126.3 to the Business and Professions Code, relating to attorneys.*

LEGISLATIVE COUNSEL'S DIGEST

SB 894, as amended, Dunn. ~~Courts.~~ *Unauthorized practice of law.*

*Existing law provides for the licensing and regulation of the practice of law by the State Bar of California. Under existing law, it is a misdemeanor for a person who is not a member of the State Bar or authorized to practice law in this state to advertise or hold himself or herself out as practicing or entitled to practice law or to otherwise practice law, subject to specified fines and imprisonment.*

*This bill would authorize a superior court, on its own motion or upon application by the State Bar or by an interested person or entity, to assume jurisdiction over the practice of a person where there is probable cause to believe that the above provisions have been violated if certain requirements are met. The bill would also, under specified circumstances, authorize the court to appoint attorneys to take specified action with regard to the person's files, clients, and accounts.*

~~Existing law specifies that the Court of Appeal for the Fourth Appellate District consists of 3 divisions.~~

~~This bill would require an administrative presiding justice to be appointed for each division of the Fourth Appellate District. The bill would require each administrative presiding justice to report directly~~

~~to the Chief Justice and would prohibit the creation of new positions and the transfer of personnel from one division to another as a result of this subdivision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6126.3 is added to the Business and  
2     Professions Code, to read:  
3     6126.3. (a) In addition to any criminal penalties pursuant to  
4     Section 6126 or to any contempt proceedings pursuant to Section  
5     6127, the courts of the state shall have the jurisdiction provided  
6     in this section when a person advertises or holds himself or  
7     herself out as a practicing or entitled to practice law, or  
8     otherwise practices law, without being an active member of the  
9     State Bar or otherwise authorized pursuant to statute or court  
10    rule to practice law in this state at the time of doing so.  
11    (b) The superior court on its own motion, the State Bar, or an  
12    interested person or entity may make application to the superior  
13    court for the county where the person described in subdivision  
14    (a) maintains or more recently has maintained his or her  
15    principal office for the practice of law or where he or she  
16    resides, for assumption by the court of jurisdiction over the  
17    practice to the extent provided in this section. In any proceeding  
18    under this section, the State Bar shall be permitted to intervene  
19    and to assume primary responsibility for conducting the action.  
20    (c) An application made pursuant to subdivision (b) shall be  
21    verified, and shall state facts showing all of the following:  
22    (1) Probable cause to believe that the facts set forth in  
23    subdivision (a) of Section 6126 have occurred.  
24    (2) The interest of the applicant.  
25    (3) Probable cause to believe that the interests of a client or of  
26    an interested person or entity will be prejudiced if the proceeding  
27    is not maintained.  
28    (d) The application shall be set for hearing, and an order to  
29    show cause shall be issued directing the person to show cause  
30    why the court should not assume jurisdiction over the practice as  
31    provided in this section. A copy of the application and order to  
32    show cause shall be served upon the person by personal delivery

1 or, as an alternate method of service, by certified or registered  
2 mail, return receipt requested, addressed to the person either at  
3 the address at which he or she maintains, or more recently has  
4 maintained, his or her principal office or at the address where he  
5 or she resides. Service is complete at the time of mailing, but any  
6 prescribed period of notice and any right or duty to do any act or  
7 make any response within that prescribed period or on a date  
8 certain after notice is served by mail shall be extended five days  
9 if the place of address is within the State of California, 10 days if  
10 the place of address is outside the State of California but within  
11 the United States, and 20 days if the place of address is outside  
12 the United States. If the State Bar is not the applicant, copies  
13 shall also be served upon the Office of the Chief Trial Counsel of  
14 the State Bar in similar manner at the time of service on the  
15 person who is the subject of the application. The court may  
16 prescribe additional or alternative methods of service of the  
17 application and order to show cause, and may prescribe methods  
18 of notifying and serving notices and process upon other persons  
19 and entities in cases not specifically provided herein.

20 (e) If the court finds that the facts set forth in subdivision (a)  
21 of Section 6126 have occurred and that the interests of a client or  
22 an interested person or entity will be prejudiced if the proceeding  
23 provided herein is not maintained, the court may make an order  
24 assuming jurisdiction over the person's practice pursuant to this  
25 section. If the person to whom the order to show cause is directed  
26 does not appear, the court may make its order upon the verified  
27 application or upon such proof as it may require. Thereupon, the  
28 court shall appoint one or more active members of the State Bar  
29 to act under its direction to mail a notice of cessation of practice,  
30 pursuant to subdivision (f), and may order those appointed  
31 attorneys to do one or more of the following:

32 (1) Examine the files and records of the practice and obtain  
33 information as to any pending matters that may require attention.

34 (2) Notify persons and entities who appear to be clients of the  
35 person of the occurrence of the event or events stated in  
36 subdivision (a) of Section 6126, and inform them that it may be in  
37 their best interest to obtain other legal counsel.

38 (3) Apply for an extension of time pending employment of  
39 legal counsel by the client.

1     (4) *With the consent of the client, file notices, motions, and*  
2 *pleadings on behalf of the client where jurisdictional time limits*  
3 *are involved and other legal counsel has not yet been obtained.*

4     (5) *Give notice to the depositor and appropriate persons and*  
5 *entities who may be affected, other than clients, of the*  
6 *occurrence of the event or events.*

7     (6) *Arrange for the surrender or delivery of clients' papers or*  
8 *property.*

9     (7) *Arrange for the appointment of a receiver, where*  
10 *applicable, to take possession and control of any and all bank*  
11 *accounts relating to the affected person's practice.*

12     (8) *Do any other acts that the court may direct to carry out the*  
13 *purposes of this section.*

14     *The court shall have jurisdiction over the files and records and*  
15 *over the practice of the affected person for the limited purposes*  
16 *of this section, and may make all orders necessary or*  
17 *appropriate to exercise this jurisdiction. The court shall provide*  
18 *a copy of any order issued pursuant to this section to the Office*  
19 *of the Chief Trial Counsel of the State Bar.*

20     (f) *The notice of cessation of law practice shall contain any*  
21 *information that may be required by the court, including, but not*  
22 *limited to, the finding by the court that the facts set forth in*  
23 *subdivision (a) of Section 6126 have occurred and that the court*  
24 *has assumed jurisdiction of the practice. The notice shall be*  
25 *mailed to all clients, to opposing counsel, to courts and agencies*  
26 *in which the person has pending matters with an identification of*  
27 *the matter, to the Office of the Chief Trial Counsel of the State*  
28 *Bar, and to any other person or entity having reason to be*  
29 *informed of the court's assumption of the practice.*

30     (g) *Nothing in this section shall authorize the court or an*  
31 *attorney appointed by it pursuant to this section to approve or*  
32 *disapprove of the employment of legal counsel, to fix terms of*  
33 *legal employment, or to supervise or in any way undertake the*  
34 *conduct of the practice, except to the limited extent provided by*  
35 *paragraphs (3) and (4) of subdivision (e).*

36     (h) *Unless court approval is first obtained, neither the*  
37 *attorney appointed pursuant to this section, nor his or her*  
38 *corporation, nor any partner or associates of the attorney shall*  
39 *accept employment as an attorney by any client of the affected*  
40 *person on any matter pending at the time of the appointment.*

1 *Action taken pursuant to paragraphs (3) and (4) of subdivision*  
2 *(e) of this section shall not be deemed employment for purposes*  
3 *of this subdivision.*

4 *(i) Upon a finding by the court that it is more likely than not*  
5 *that the application will be granted and that delay in making the*  
6 *orders described in subdivision (e) of this section will result in*  
7 *substantial injury to clients or to others, the court, without notice*  
8 *or upon notice as it shall prescribe, may make interim orders*  
9 *containing any provisions that the court deems appropriate*  
10 *under the circumstances. Such an interim order shall be served*  
11 *in the manner provided in subdivision (d) and, if the application*  
12 *and order to show cause have not yet been served, the*  
13 *application and order to show cause shall be served at the time*  
14 *of serving the interim order.*

15 *(j) No person or entity shall incur any liability by reason of the*  
16 *institution or maintenance of a proceeding brought under this*  
17 *section. No person or entity shall incur any liability for an act*  
18 *done or omitted to be done pursuant to order of the court under*  
19 *this section. No person or entity shall be liable for failure to*  
20 *apply for court jurisdiction under this section. Nothing in this*  
21 *section shall affect any obligation otherwise existing between the*  
22 *affected person and any other person or entity.*

23 *(k) An order pursuant to this section is not appealable and*  
24 *shall not be stayed by petition for a writ, except as ordered by the*  
25 *superior court or by the appellate court.*

26 *(l) A court's order assuming jurisdiction of the affected*  
27 *person's practice pursuant to this section may include an award*  
28 *of reasonable attorneys fees and costs to the State Bar or to the*  
29 *other interested person or entity conducting the action.*

30 ~~SECTION 1. Section 69104 of the Government Code is~~  
31 ~~amended to read:~~

32 ~~69104. (a) The Court of Appeal for the Fourth Appellate~~  
33 ~~District consists of three divisions. One division shall hold its~~  
34 ~~regular sessions at San Diego and shall have 10 judges. One~~  
35 ~~division shall hold its regular sessions in the San~~  
36 ~~Bernardino/Riverside area and shall have seven judges. One~~  
37 ~~division shall hold its regular sessions in Orange County and~~  
38 ~~shall have eight judges.~~

39 ~~(b) An administrative presiding justice shall be appointed~~  
40 ~~within each division of the Fourth Appellate District. Each~~

1 ~~division's administrative presiding justice shall report directly to~~  
2 ~~the Chief Justice. No positions shall be newly created and no~~  
3 ~~personnel shall be transferred from one division to another as a~~  
4 ~~result of this subdivision.~~

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